

RECORDATION NO. 9620... Filed & Recorded

AUG 3 1978 - 6 25 AM

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* ADMITTED IN DISTRICT OF
COLUMBIA ONLY
* ADMITTED IN MARYLAND AND
DISTRICT OF COLUMBIA

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RECORDATION NO. 9620-A Filed & Recorded

AUG 3 1978 - 6 25 AM

INTERSTATE COMMERCE COMMISSION

August 2, 1978

RECORDATION NO. 9620-B Filed & Recorded

AUG 3 1978 - 6 25 AM

INTERSTATE COMMERCE COMMISSION

Secretary of the Interstate
Commerce Commission
Twelfth and Constitution, N.W.
Washington, D. C. 20423

Attention: Mildred Lee
Room 1227

Dear Sir:

Enclosed herewith for filing in your office,
pursuant to Section 20c of the Interstate Commerce Act,
are five (5) executed counterparts of each of the
following:

1. Purchase Order Assignment dated as of
July 18, 1978, by Consolidated Rail Corporation,
Assignor, to The Fidelity Bank, as Trustee, Assignee;
and Consent and Agreement dated as of July 18, 1978, by
Portec, Inc.; providing for the assignment of certain
rights to purchase two hundred twenty-seven (227) tri-
level enclosed auto racks for use in connection with
Interstate Commerce;

2. Equipment Trust Agreement dated as of
July 18, 1978, between Heleasco Two, Inc., as Trustor,
and The Fidelity Bank, as Trustee, providing for the
purchase and lease of two hundred twenty-seven (227)
tri-level enclosed auto racks for use in connection with
Interstate Commerce; and

3. Lease of Railroad Equipment dated as of
July 18, 1978, between The Fidelity Bank, as Trustee,
Lessor, and Consolidated Rail Corporation, Lessee, pro-
viding for the lease of two hundred twenty-seven (227)

8-2154030

No. AUG 3 1978
Date.....
Fee \$/52

ICC Washington, D. C.

RECEIVED

Counterparts - Joseph Thompson

Secretary of the Interstate
Commerce Commission
August 2, 1978
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tri-level enclosed auto racks for use in connection
with Interstate Commerce.

Also enclosed is a check in the amount of \$150.00
for the recordation fees.

The names and addresses of the parties to the
foregoing documents are as follows:

Trustee and The Fidelity Bank
Lessor: Broad and Walnut Streets
 Philadelphia, Pennsylvania 19109

Attention: Corporate Trust
 Department

Trustor: Heleasco Two, Inc.
 1200 Philadelphia Pike
 Claymont, Delaware 19073

Attention: President

Lessee: Consolidated Rail Corporation
 1310 Six Penn Center Plaza
 Philadelphia, Pennsylvania 19104

Attention: Vice President
 and Treasurer

Builder: Portec, Inc.
 300 Windsor Drive
 Oak Brook, Illinois 60521

The equipment covered by the Agreements consists
of two hundred twenty-seven (227) tri-level enclosed auto
racks, bearing Consolidated Rail Corporation's Identifying
Numbers CR4501 through 4727 inclusive. Such equipment also
bears the following legend:

"Auto Rack Owned By A Bank Or Trust
Company Under A Security Agreement Filed
Under Section 20c Of The Interstate Commerce
Act And Article 9 Of The Pennsylvania

Secretary of the Interstate
Commerce Commission
August 2, 1978
Page 3

Uniform Commercial Code and Leased Under
A Lease Deposited Under Section 86 Of The
Railway Act Of Canada."

on both sides of each auto rack.

Kindly return to the bearer three (3) counter-
parts of each of the Agreements.

Sincerely yours,


Alan J. Mogol

AJM/bhl

Enclosures

RECORDATION NO. 9620-^B

AUG 3 1978 9 25 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of July 18, 1978

between

THE FIDELITY BANK, as Trustee

Lessor

and

CONSOLIDATED RAIL CORPORATION

Lessee

**227 Tri-level Enclosed
Auto Racks**

See Section 9 for Lessor's Disclaimer of Warranties

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on August _____, 1978, at _____ A.M.,
Recordation No. _____.

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LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT dated as of July 18, 1978 (hereinafter called the Lease), between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (hereinafter called the Lessee), and THE FIDELITY BANK, as Trustee (hereinafter called the Lessor) under an Equipment Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with HELEASCO TWO, INC. (hereinafter called the Trustor).

WHEREAS, the Lessee has entered into a Purchase Agreement dated as of February 28, 1978 (hereinafter called the Purchase Order) with Portec, Inc. (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessee the items of railroad equipment described in Schedule A hereto, which will consist of tri-level enclosed auto racks (hereinafter called the Equipment, an Item of Equipment, or an Item);

WHEREAS, the Lessee is assigning to the Lessor its interests in the Purchase Order pursuant to a Purchase Order Assignment dated as of the date hereof (hereinafter called the Assignment), and the Builder is consenting to the Assignment;

WHEREAS, the Lessee desires to lease such Items of Equipment as are delivered and accepted and settled for under the Purchase Order and the Assignment, at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, pursuant to a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) loans made by Provident National Bank and The Union National Bank of Pittsburgh (hereinafter collectively called the Loan Participants) are to be evidenced by Interim Equipment Trust Certificates and Equipment Trust Certificates issued under the Trust Agreement, secured by a security interest in the Equipment and payable from amounts paid by Lessee hereunder; and certain terms used herein are defined in the Finance Agreement and the Trust Agreement and shall have the meanings set forth therein unless otherwise defined herein;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Equipment to the Lessee upon the following terms and conditions:

1. *Net Lease.* This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and the Lessee shall not be entitled to any abatement of rent, reduction thereof, setoff or counterclaim against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor or the Trustor under this Lease, the Finance Agreement, the Purchase Order, or the Assignment, or against the Builder or the Loan Participants or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Equipment from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Equipment, the prohibition of or other restriction against the Lessee's use of all or any of the Equipment, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor, the Trustor or the Builder for any reason whatsoever.

2. Delivery and Acceptance of Equipment.

(a) The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Equipment pursuant to the Assignment, and the Lessee agrees to inspect the Equipment during construction of the Equipment, with the intention that the Equipment should be of as high a quality as if the Lessee were itself purchasing the Equipment for its permanent use. The Lessor retains the right, but shall not have the obligation, to make its own inspection of the Equipment during construction or upon delivery, in addition to inspections performed hereunder by the Lessee. The Equipment will be delivered to the Lessee, subject to the conditions herein, in the Finance Agreement, in the Assignment and in the Purchase Order, at the point or points within the United States designated in the Purchase Order (the date of delivery of each Item of Equipment being hereinafter called the Delivery Date with respect thereto). Upon delivery, the Lessee will cause an employee of the Lessee to inspect each Item of Equipment, and if such Item of Equipment is found to be in accordance with the Specifications (as defined in the Purchase Order), to accept delivery of such Item of Equipment and execute and deliver to the Lessor a certificate of delivery (hereinafter called the Certificate of Delivery) in accordance with the Finance Agreement and the Assignment, stating that such Item of Equipment has been inspected and accepted by the Lessee on behalf of the Lessor on the date of such Certificate of Delivery and is marked in accordance with Section 5 hereof: whereupon (subject to paragraph (b) of this Section) such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

(b) The Lessee will not accept the delivery of any Item of Equipment on any Delivery Date if:

(1) the documents, certificates and opinions required to be delivered pursuant to Section 3 of the Finance Agreement prior to or on the initial Delivery Date, shall not have been delivered as stated therein; or

(2) any other document, certificate or opinion required to be delivered as a condition precedent to the Participants' obligations pursuant to the provisions of the Finance Agreement prior to, or on and with respect to any Closing Date shall not have been delivered as stated therein; or

(3) an Event of Default (as hereinafter defined) or other event which after notice or lapse of time or both would become an Event of Default has occurred and be continuing; or

(4) the Purchase Price (as such term is defined in the Trust Agreement) of such Item of Equipment together with the aggregate Purchase Price of all Items of Equipment previously accepted exceeds the sum of the Aggregate Loan Participants' Commitment and the Trustor's Commitment (as such terms are defined in the Trust Agreement).

In no event will the Lessee accept deliveries after October 26, 1978. Upon delivery and acceptance of the final Item of Equipment to be leased hereunder, or October 26, 1978 (whichever first occurs), the Lessee shall provide written notice to the Lessor designating the first day of the calendar month next succeeding the date of such notice as the Final Closing Date.

3. *Rentals.* The Lessee agrees to pay the Lessor, as rental with respect to each Item of Equipment delivered and accepted pursuant to Section 2 hereof (i) for the period from the Closing Date with respect thereto through the last day of the Interim Lease Term (as defined in Section 4 hereof) an amount equal to .0275% of the aggregate of the Purchase Price with respect to each Item of Equipment for each day during such period, and (ii) for the Lease Term (as defined in Section 4 hereof) one hundred twenty (120) consecutive payments, each of which shall be in an amount equal to 1.076441% of the aggregate Purchase Price for each Item accepted under this Lease.

The rentals due for the Interim Lease Term shall be paid, in arrears, on the first day of the Lease Term. The rentals due for the Lease Term shall be paid, in advance, on the first day of the month for each calendar month during the Lease Term.

During any extension of this Lease pursuant to Section 14 hereof, the rentals during such extension shall be payable as provided in Section 14.

If any of the rental payment dates referred to above is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Lessee shall pay all rental and other payments required to be paid by the Lessee to the Lessor hereunder promptly to the Lessor in Federal or other funds immediately available at the Corporate Trust Department of Lessor and to the account specified on the signature page hereof or such other place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this Section in Federal or other funds immediately available to the Lessor by 11:00 a.m., local time, on the date when and in the city where such payment is due.

4. *Term of Lease.* The term of this Lease as to each Item of Equipment shall consist of (i) the period from the date of delivery and acceptance of such Item of Equipment to, but not including, the Final Closing Date (the Interim Lease Term) and (ii) a period of one hundred twenty (120) months commencing on the Final Closing Date (the Lease Term) and, subject to the provisions of Sections 7, 11 and 14 hereof, shall terminate on the last day of the one hundred twentieth (120th) month thereafter. The obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 3, 6, 7, 9, 10 and 12 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Equipment are subject to the provisions of the Trust Agreement; provided, however, if the Lessee is not in default hereunder this Lease may not be terminated and the Lessee shall be entitled to its rights of assignment, possession and use under Section 13 hereof.

5. *Identification Marks.* The Lessee will cause at its expense each Item of Equipment to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Item of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Item of Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Item of Equipment, in letters not less than one inch in height, the words "AUTO RACK OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER SECTION 20c OF THE INTERSTATE COMMERCE ACT AND ARTICLE 9 OF THE PENNSYLVANIA UNIFORM COMMERCIAL CODE AND LEASED UNDER A LEASE DEPOSITED UNDER SECTION 86 OF THE RAILWAY ACT OF CANADA", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title and the Loan Participants' security interest in such Item of Equipment and the rights of the Lessor under this Lease and the rights of the Loan Participants under the Trust Agreement. The words and identifying number shall be affixed to each Item before it is assembled on or attached to a flatbed car or as soon thereafter as possible; but, in all events, prior to delivery pursuant to Section 2 hereof. The Lessee will not place any Item of Equipment in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Loan Participants and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Finance Agreement shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Loan Participants and the Lessor an opinion of counsel to such effect. The Item of Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or similar type as the Equipment for convenience of identification of its right to use the Equipment as permitted by this Lease.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Item of Equipment as a designation that might be interpreted as a claim of ownership.

6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Trustor for collection or other charges and will be free of expense to the Lessor and the Trustor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Lessor or the Trustor in consequence of the receipt of payments provided for herein and other than state or local taxes measured by net income or value added, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) now or hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Finance Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Item of Equipment or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Item of Equipment free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Item of Equipment; that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith, with due diligence, and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof is permitted by law and does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Loan Participants under the Trust Agreement and/or the Finance Agreement. If the Lessee is prohibited from contesting such impositions

sition in its own name, the Lessor and/or the Trustor (as may be required) shall, upon written request from the Lessee, contest such imposition; provided, however, that such contest shall be at the Lessee's sole expense and the Lessee shall indemnify and hold the Lessor and/or the Trustor harmless from and against any and all costs and expenses incurred by the Lessor and/or the Trustor in connection therewith. The Lessee agrees to give the Lessor notice of such contest within thirty (30) days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor or the Trustor directly and paid by the Lessor or the Trustor, the Lessee shall reimburse the Lessor or the Trustor on presentation of an invoice therefor, with interest at a rate equal to the lesser of twelve and one-half (12½) percent per annum or the maximum rate permitted by applicable law, for the period between payment of the imposition by the Lessor or the Trustor and reimbursement.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all returns, statements and reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Equipment, the security interest of the Loan Participants in the Equipment or the leasing thereof to the Lessee. The Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Loan Participants in the Equipment, as the case may be.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Section, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this Section, the

Lessor hereby authorizes the Lessee to act in the Lessor's name and on the Lessor's behalf; and the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this Section. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's or the Trustor's compliance with the requirements of taxing jurisdictions.

7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Item of Equipment which is subject to this Lease in good operating order, repair and condition, normal wear and tear excepted.

In the event that any Item of Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged, seized or attached by a judgment creditor of the Lessee, or rendered permanently unfit or unavailable for use from any cause whatsoever, or taken or requisitioned by condemnation or requisitioned for use or otherwise, except requisition for use by the United States government for a stated period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Item of Equipment in the manner set forth in Section 12 hereof, the Lessee shall promptly and fully inform the Lessor and the Loan Participants with respect to any such occurrence including the requisition for use by the United States government. On the rental payment date with respect to such Item of Equipment next succeeding such Casualty Occurrence, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Item of Equipment due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Item of Equipment determined as of the date of

such rental payment date in accordance with the schedule referred to below. As of the rental payment date on which the Casualty Value is due, the rental for such Item of Equipment shall cease to accrue, the term of this Lease as to such Item of Equipment shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Item of Equipment) the Lessor shall be entitled to recover possession of such Item of Equipment. Any Casualty Value not paid when due shall accrue interest as provided in Section 16 hereof. The Lessor hereby appoints the Lessee its agent to dispose of any Item of Equipment or any component thereof suffering a Casualty Occurrence, at the best price obtainable on an "as is, where is" basis without recourse to, or representation or warranty by, the Lessor. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale or condemnation award to the extent they do not exceed the Casualty Value of such Item of Equipment, and shall pay any excess to the Lessor.

The Casualty Value of each Item of Equipment as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Item of Equipment as is set forth in Schedule B attached hereto (which Schedule B is subject to revision on each Closing Date as required to reflect any adjustments in the Purchase Price of the Equipment and the percentage factors) opposite the rental payment date next succeeding the actual date of such Casualty Occurrence, or if there is a casualty after the Lease has terminated but before the Item of Equipment shall have been returned in the manner provided in Section 12 hereof, the rental payment date immediately preceding the date of loss.

Whenever any Item of Equipment shall suffer a Casualty Occurrence after termination of this Lease and before such Item of Equipment shall have been returned in the manner provided in Section 12 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Item of Equipment. Upon the making of any such payment by the Lessee in respect of any Item of Equipment (except in the case of the loss, theft or complete destruction of such Item of Equipment), the Lessor shall be entitled to recover posses-

sion of such Item of Equipment, and the Lessor appoints the Lessee its agent to dispose of such Item of Equipment or any component thereof, at the best price obtainable on an "as is, where is" basis without recourse to, or representation or warranty from, the Lessor. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of any sale or condemnation award to the extent they do not exceed the Casualty Value of such Item of Equipment and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States government or other governmental authority (hereinafter called the Government) of any Item of Equipment during the term of this Lease or any renewal thereof not constituting a Casualty Occurrence, all of the Lessee's obligations under this Lease with respect to such Item of Equipment shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the Government for the use of such Item of Equipment during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Item of Equipment after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove provided in this Section, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Item of Equipment from and after delivery and acceptance thereof by the Lessee hereunder until such Item of Equipment shall have been returned in the manner provided in Section 12 hereof.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained all-risk property damage insurance in respect of the Equipment at the time subject hereto, and public liability insurance, at least in amounts and against risks customarily insured against by comparable Class I railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Lessee on similar equipment owned by it. Such public liability insurance shall be, at

the time of execution of this Lease, a policy containing not more than a \$2,000,000 deductible and insuring against loss of up to \$50,000,000 per occurrence. Any policies of public liability insurance or property damage insurance carried in accordance with this paragraph shall (i) name the Lessor and the Trustor and the Loan Participants as additional named insureds as to liability insurance or loss payees as to property damage insurance as the case may be, as their respective interests may appear, (ii) require thirty (30) days' prior written notice of material change, cancellation or the removal of the Lessor or the Trustor or the Loan Participants as named insureds as the case may be, to the Lessor, the Trustor and the Loan Participants, and (iii) shall provide that in respect of the interests of the Lessor, the Trustor and the Loan Participants in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor, the Trustor or the Loan Participants) and shall insure the Lessor, the Trustor and the Loan Participants regardless of any breach or violation of any warranty, declaration, or condition contained in such policies by the Lessee or any other person (other than the Lessor, the Trustor or the Loan Participants).

Upon the execution of this Lease, and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies theretofore delivered pursuant hereto, the Lessee shall deliver to the Lessor, the Loan Participants and the Trustor a certificate of insurance issued by an authorized representative of the insurers for the insurance maintained pursuant to this Section: provided, however, that if the delivery of a formal certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal certificate upon receipt thereof.

8. *Waivers; Reports.* Lessee intends to use the Items of Equipment by attaching them to railroad flat cars which are owned or leased by Lessee. Lessee agrees that each railroad car to which an Item of Equipment is attached shall be either owned by Lessee or leased by Lessee for a period at least equal to the term of this Lease subject to the right of the lessor with respect thereto to terminate any such lease upon 12 months prior written notice. Lessee will immediately upon receipt send copies of such notice of termination to Lessor and Participants. In the event of any such termination, Lessee will cause such Items of Equipment to be reattached to other

railroad cars so that use of the same continues uninterrupted. Lessee agrees that, within 9 months of the date of any such notice of termination, such reattachment shall have been completed and Lessor and the Participants notified of the applicable identifying numbers, and that the failure to do so shall be deemed to be an Event of Default hereunder. Lessee agrees to cause the owner of, any lessor of, and any holder of any security interest in any railroad car to which any Item of Equipment is attached to waive any right of ownership or security interest in the Item of Equipment attached to such railroad car. On or prior to the Delivery Date for any Item, the Lessee shall advise the Lessor and the Participants of the identifying number, owner, and if applicable, lessor of or holder of any security interest in the railroad car to which such Item is to be attached, and shall deliver together therewith evidence of such of the foregoing waivers as may be applicable in form and substance satisfactory to Lessor and Participants. Any changes in such information, including but not limited to any change of identifying number, shall be communicated promptly to the Lessor and the Participants and additional waivers, if applicable, shall be delivered to the Lessor and the Participants.

On or before April 30 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor, the Loan Participants and the Trustor, an accurate statement (a) setting forth as at the preceding December 31 the amount, description and identifying numbers of all Equipment then leased hereunder or covered by the Finance Agreement, the amount, description and identifying numbers of all Equipment that has suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Lessor or the Loan Participants may reasonably request and (b) stating that, in the case of all Equipment repainted or repaired during the period covered by such statement, the identifying numbers and markings required by Section 5 hereof have been preserved or replaced. The Trustor, Lessor or the Loan Participants, at their sole cost and expense, shall have the right by their agents, to inspect the Equipment and the Lessee's records with respect thereto

at such reasonable times as the Lessor or the Loan Participants may request during the continuance of this Lease.

9. *Disclaimer of Warranties; Compliance with Laws and Rules.* NEITHER THE LESSOR NOR THE TRUSTOR MAKE, HAVE MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE LESSOR NOR THE TRUSTOR MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE EQUIPMENT OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ITEM (EITHER UPON DELIVERY THEREOF TO THE LESSOR OR OTHERWISE), INTERFERENCE BY ANY PARTY OTHER THAN THE LESSOR OR THE TRUSTOR WITH THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE TRUSTOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of the Assignment and the Builder's Consent and the patent infringement and indemnification provisions of the Purchase Order; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. THE LESSOR AND THE TRUSTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO THE LESSEE OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE FOLLOWING: (i) ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT OR BY

ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN OR BY ANY OTHER CIRCUMSTANCES IN CONNECTION THEREWITH; (ii) THE USE, OPERATION OR PERFORMANCE OF ANY ITEM OF EQUIPMENT OR ANY RISKS RELATING THERETO; (iii) ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS OR CONSEQUENTIAL DAMAGES; OR (iv) THE DELIVERY, OPERATION, SERVICING, MAINTENANCE, REPAIR, IMPROVEMENT OR REPLACEMENT OF ANY EQUIPMENT. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that the Equipment described therein is satisfactory to the Lessee in their design, condition, material, workmanship, use, operation and performance, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on the character or use of the Equipment delivered.

The Lessee agrees, for the benefit of the Lessor and the Loan Participants to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Item of Equipment) with all applicable laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that, prior to the expiration of the Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Item of Equipment, the Lessee will conform therewith at its own expense and the Lessor will have title thereto. Notwithstanding the preceding sentence, the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of counsel to the Lessor or the Loan Participants, adversely affect the property or rights of the Lessor or the Loan Participants under this Lease, the Purchase Order, the Finance Agreement, the Trust Agreement or the Assignment.

Except as set forth in the first paragraph of Section 7 hereof and the second paragraph of this Section, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Equipment during the term of this Lease as are readily removable without causing material damage to the Equipment (and do not adversely and materially affect the value of the Equipment). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee and shall be removed by it upon the return of the Equipment pursuant to Section 12, except to the extent such additions, modifications or improvements are subject to the next paragraph hereof.

Any and all parts installed on and additions and replacements made to any Item of Equipment (i) which are not readily removable without causing material damage to such Item of Equipment, or (ii) which were made in the course of ordinary maintenance of the Equipment or (iii) which are required for the operation or use of such Item of Equipment by the interchange rules of the Association of American Railroads and of the Interstate Commerce Commission, or by any lawful rule of the Department of Transportation or other applicable regulatory body, shall constitute accessions to such Item of Equipment and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Trust Agreement) shall immediately be vested in the Lessor. At its option the Lessor may require the Lessee to remove any or all such parts, additions or replacements at the time the Equipment is returned to the Lessor pursuant to the provisions of Section 12 hereof.

10. Indemnification.

(a) General. Except as otherwise specifically provided in this Lease, the Lessee shall pay, and shall protect, indemnify and hold the Lessor (including for purposes of this Section The Fidelity Bank in its personal capacity), the Trustor, the Loan Participants and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may

be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Lease or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Item of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Lessor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Lessor's obligations under the Finance Agreement, the Trust Agreement or the Assignment. The Lessee shall be obligated under this Section, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this Section without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and,

in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this Section 10(a), the Lessee shall pay such Indemnified Person an amount which, after reduction by reason of all taxes required to be paid by such Indemnified Person, as the case may be, in respect to the receipt thereof under the laws of the United States or of any state or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect to the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against; however, the failure to give any such notice shall not relieve the Lessee of its obligation under this Section. Upon the payment in full by the Lessee of any indemnities as contained in this Section 10(a), and provided that no Event of Default (or other event which with the lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 10(a) shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made.

The indemnities contained in this Section 10(a) shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. Any indemnity payment pursuant to this Section 10(a) shall be made directly to the Indemnified Person. None of the indemnities in this Section 10(a) shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under

any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

(b) Indemnity for Failure to Obtain Depreciation Deduction, Investment Tax Credit, or Interest Deduction. This Lease has been entered into based on the understanding that the Lessor and the Trustor shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (the "Code"), to an owner of property, including (without limitation) an allowance for (a) the maximum depreciation deduction authorized with respect to the Equipment pursuant to an accelerated depreciation method with respect to new equipment under Section 167 of the Code, depreciated to a ten (10) percent salvage value over a ten (10) year life (the "Depreciation Deduction"); (b) the maximum investment tax credit provided for in Sections 38 and 46 through 50 of the Code with respect to the Equipment (the "Investment Tax Credit"); and (c) the deduction in each taxable year of the Trustor and the Lessor for all interest paid or accrued during such year on the indebtedness evidenced by the Certificates, computed in accordance with Section 163 of the Code (the "Interest Deduction"). It is understood and agreed that this Section is for the ultimate benefit of the Trustor, and that the Lessor as Trustee under the grantor trust, as well as the Trustor, is vested with the right, power and authority to enforce this Section 10(b).

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor or the Trustor such records as will enable the Lessor or the Trustor to determine whether it is entitled to the full benefit of the Depreciation Deduction and the Investment Tax Credit with respect to the Equipment, and the Interest Deduction.

Except as the result of the occurrence of any one or more of the following events: (i) a disqualifying disposition due to sale of any

Item of the Equipment or this Lease by Lessor prior to any Default by Lessee; or (ii) the failure of the Lessor and/or the Trustor to timely and properly claim Investment Tax Credit or Depreciation Deduction or Interest Deduction in the tax return of the Lessor and/or the Trustor (or the consolidated federal tax payer group of which the Trustor is a part); or (iii) the failure of the Lessor and/or the Trustor to have sufficient liability for federal income taxes against which to credit such Investment Tax Credit or sufficient taxable income before deduction of depreciation with respect to the Equipment to offset the full amount of any such Depreciation Deduction or Interest Deduction; or (iv) any event which by the terms of this Lease require payment by the Lessee of the Casualty Value, if such Casualty Value is thereafter actually paid by the Lessee to the Lessor, to the extent that such payment reimburses the Lessor for amounts otherwise payable by Lessee hereunder.

if the Lessor and/or the Trustor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed or recaptured all or any portion of (a) the Depreciation Deduction with respect to one hundred (100) percent of the Purchase Price of the Equipment, using initially the double declining balance method and thereafter the sum of the years' digits method, or (b) the Investment Tax Credit, or (c) the Interest Deduction, for any period prior to the termination of this Lease, then Lessee shall pay to the Trustor or the Lessor as additional rent an amount which, after deduction of all taxes required to be paid by the Trustor or the Lessor in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority of the United States of America, shall be equal to such sums as, in the reasonable opinion of the Trustor or the Lessor, and to the reasonable satisfaction of the Lessee, will cause the Trustor's or Lessor's net return to be equal to, but no greater than, the net return that would have been available to the Trustor or the Lessor if it had been entitled to the utilization of all of the Depreciation Deduction and/or the Investment Tax Credit and/or the Interest Deduction which was lost, not available for claim, disallowed or recaptured by or from the Trustor or the Lessor, plus such sum as will pay or reimburse the Trustor or the Lessor for any interest or penalties incurred in connection with the Depreciation Deduction and/or the Investment Tax Credit and/or the Interest Deduction which is lost, not available for claim, disallowed or recap-

tured. In the event the Lessee shall have made such a payment to the Lessor, the Casualty Values set forth in Schedule B attached hereto shall be reduced by the amount, if any, included therein which represents reimbursement to the Trustor or the Lessor for the portion of such Depreciation Deduction and/or the Investment Tax Credit and/or Interest Deduction so lost or disallowed; provided that the Casualty Value shall at no time be less than the aggregate principal balance of the outstanding Certificates.

If such loss, disallowance, recapture or unavailability, as provided in the immediately preceding paragraph, shall have occurred during the term of this Lease, then at the Lessee's option evidenced by written notice to the Lessor, either (i) the Lessee shall pay to the Lessor, in a lump sum, an amount sufficient to indemnify the Lessor against such loss in the amount determined hereinabove, or (ii) the Lessor and the Lessee shall in good faith attempt to agree upon (x) a mutually satisfactory increase in the rental payments to be paid on each then remaining rental payment date hereunder sufficient to indemnify the Lessor against such loss in the amount determined hereinabove, and (y) an appropriate adjustment to the Casualty Values set forth in Schedule B attached hereto.

In the event a claim shall be made by the Internal Revenue Service or any state or local taxing authority which, if successful, would result in a loss of any of the tax benefits referred to in this Section 10(b) and would require the Lessee to indemnify the Trustor or the Lessor for such loss, the Trustor or the Lessor hereby agrees to take such action, for a reasonable period of time, in connection with contesting such claim as the Lessee shall reasonably request in writing from time to time; provided, however, that (i) within thirty (30) days after notice by the Trustor or the Lessor to the Lessee of such claim, the Lessee shall request that such claim be contested; (ii) the Trustor or the Lessor, at its option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service or any state or local taxing authority as the case may be, in respect of such claim and may, at its option, contest the claim in any permissible forum considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Trustor or the Lessor with an opinion of the Lessee's independent tax counsel to the effect

that a meritorious basis exists for such claim; and (iv) the Lessee shall have indemnified the Trustor or the Lessor in a manner satisfactory to it for any liability or loss which the Trustor or the Lessor may incur as the result of contesting such claim and shall have agreed to pay the Trustor or the Lessor from time to time on demand all costs and expenses which the Trustor or the Lessor may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys', accountants' and investigatory fees and disbursements, (B) the amount of any interest or penalty which may ultimately be payable as the result of contesting such claim, and (C) in the event the Trustor or the Lessor shall pay the tax claimed and then seek a refund and the final determination of such claim shall be adverse to the Trustor or the Lessor, interest at the rate of nine (9) percent per annum on the amount of the tax paid attributable to such loss, computed from the date of payment of such tax to the date the Lessee shall reimburse the Trustor or the Lessor for the payment of such tax in accordance with the terms hereof. If any such claim referred to above shall be made and the Lessee shall have reasonably requested the Trustor or the Lessor to contest such claim as above provided and shall have duly complied with all of the terms of this Section 10(b), the Lessee's liability with respect to any such loss as a consequence of such claim shall become fixed and payable upon final determination of the Trustor's or the Lessor's liability for the tax claimed and after giving effect to any refund obtained, together with interest at the rate of nine (9) percent per annum thereon; but in all other cases the liability of the Lessee shall become fixed at the time the Trustor or the Lessor makes payment of the tax attributable to the tax benefit lost or the adjustment of the tax return of the Lessor or the Trustor (or the consolidated federal tax payer group of which the Trustor is a part) to reflect such loss, whichever occurs first. In the case of any such claim referred to above, the Trustor or the Lessor agrees promptly to notify the Lessee in writing of such claim, agrees not to make payment of such claim for at least thirty (30) days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Trustor or the Lessor, and otherwise to cooperate with the Lessee in good faith in order to effectively contest any such claim and, if and to the extent agreeable to the Trustor or the Lessor, to permit Lessee to participate in the

proceeding relating to such claim. At any time, whether before or after commencing to contest any such claim, the Lessor or the Trustor may decline to contest such claim by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Lessor or the Trustor with respect to such claim or such portion thereof as may be specified in such notice.

(c) *Survival of Obligations of the Lessee.* The obligations of the Lessee under this Section 10 shall survive the termination of this Lease, so long as such obligations arose, whether or not assessed or otherwise finalized, during the term of this Lease.

(d) *Limitation on Indemnity.* The indemnity contained in Section 10(a) hereof shall not extend to any loss, damage, injury, liability, claim, demand, cost, charge, or expense incurred by any Indemnified Person (1) caused by the wilful misconduct or gross negligence of such Indemnified Person, (2) resulting from acts or events with respect to any Item of Equipment which commence after possession of such Item of Equipment has been returned to the Lessor in the manner provided in Section 12 hereof, (3) caused by the material violation by such Indemnified Person of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee), (4) arising from the breach of any representation or warranty of such Indemnified Person set forth in Section 6 of the Finance Agreement, (5) which is related to any lien, charge, security interest or other encumbrance which the Lessee is not required by Section 13 hereof to pay or discharge, or (6) otherwise expressly stated herein or in any of the other documents related to the transactions contemplated hereby to be borne by such Indemnified Person in its personal capacity.

11. *Default; Remedies.* If, during the continuance of this Lease, one or more of the following events (each such event being herein called an Event of Default) shall occur:

A. default shall be made in payment of any amounts required to be paid by the Lessee hereunder, and such default shall continue for five (5) days:

B. the Lessee shall fail to provide and maintain insurance as required by Section 7 hereof;

C. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Equipment, or any thereof;

D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Finance Agreement, or in any certificate, instrument or document provided pursuant hereto or thereto, and such default shall continue for thirty (30) days after written notice from the Lessor or the Loan Participants to the Lessee, specifying the default and demanding that the same be remedied;

E. any representation or warranty of the Lessee made herein, in the Finance Agreement, or in any certificate, instrument or document provided pursuant hereto or thereto shall prove to have been materially incorrect when made;

F. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and such petition shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), or all the obligations of the Lessee, under this Lease or under the Finance Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trust or trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier;

G. any other proceedings shall be commenced by or against the Lessee, for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Finance Agreement, under any bankruptcy or insol-

vency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Finance Agreement), and such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), or all the obligations of the Lessee under this Lease or under the Finance Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

H. default by the Lessee in any lease obligation relating to railroad cars to which any Item of Equipment is attached and demand by the lessor with respect thereto (or any party claiming by or through such lessor) to recover possession of such railroad cars;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor (or the Trustor) would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Equipment so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and

thereupon may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor or its agents, (1) require the Lessee to return the Equipment, or one or more Items of the Equipment pursuant to Section 12 hereof; (2) take or cause to be taken immediate possession of the Equipment, or one or more of the Items of the Equipment, without liability to return to the Lessee any sums theretofore paid and free from all claims whatsoever; (3) remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, subject only to all non-waivable requirements of due process of law; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts which the Lessor, in its sole discretion, shall specify (x) a sum, with respect to each Item of Equipment, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Item of Equipment which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Item of Equipment over the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Item of Equipment during such period, such present value to be computed in each case on the basis of a six (6) percent per annum discount, to the extent permitted by

law, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, plus (C) amounts due pursuant to the provisions of Section 10(b) hereof, or (y) a sum, with respect to each Item of Equipment, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Item of Equipment which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Item of Equipment over the then present value of the actual rentals for such Item of Equipment which Lessor shall have contracted to receive pursuant to any lease in replacement of this Lease, such present value to be computed in each case on the basis of a six (6) percent per annum discount, to the extent permitted by law, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) an amount calculated pursuant to clause (B) of this Section 11(b)(x), plus (C) an amount calculated pursuant to clause (C) of this Section 11(b)(x), or (z) an amount with respect to each Item of Equipment equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the net proceeds of the sale of such Item of Equipment if sold, or, if not sold at such time, the Fair Market Sales Value (as hereinafter defined). In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and ex-

penses incurred in connection with the return of any Item of Equipment.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

Except as otherwise provided in this Lease, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Items thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirement with respect to the enforcement of the Lessor's rights under this Lease and any and all rights of redemption.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or reoccurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Lessor, the Trustor and the Loan Participants, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean any Corporate Officer of the Lessee who is designated as such in the annual report of the Lessee; provided, however, in the event no annual report is published by the Lessee in any year during the Lease Term, such term shall mean, with respect to the subject matter of any covenant,

agreement or obligation of the Lessee in this Lease contained, any Corporate Officer of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

12. *Return of Equipment.* The Lessor intends to retain the Equipment for lease or sale at the expiration or earlier termination of the Lease Term or any extension thereof to a subsequent lessee or purchaser. If this Lease shall terminate pursuant to Section 11 hereof, or upon the expiration of the Lease Term or extended term of this Lease (and provided that the Lessee has not exercised its option to purchase the Equipment or to extend the term of Lease) the Lessee will, at its own cost and expense, at the request of the Lessor, forthwith deliver possession of the Equipment to the Lessor. Each Item of Equipment so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction, applicable to railroad equipment of the same type as the Equipment. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Item shall have been interchanged to return the Item of Equipment so interchanged) place such Items upon such storage tracks or other property of the Lessee or any of its affiliates as the Lessor may designate, or, in the absence of such designation, as the Lessee may select;

(b) permit the Lessor to store such Equipment on such tracks or other property of the Lessee at the risk of the Lessee, for a period not to exceed three (3) months from the date of such storage, without charge for insurance, rent or storage until such Equipment have been sold, leased or otherwise disposed of by the Lessor;

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor; and

(d) remove the Equipment from any cars to which they are attached and place them in storage areas adjacent to storage tracks of the Lessee or any of its affiliates, or re-install such Equipment on other cars, all as the Lessor reasonably may designate. The assembling, delivery, removal, re-installation, storage, insurance and transporting of the Equipment as hereinbefore provided shall be at the expense and risk of the Lessee and without charge to the Lessor for insurance, and are of the essence of this Lease, and upon applications to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, remove, re-install and transport the Equipment. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee, or user of any such Item of Equipment, to inspect the same. If the Lessor is unable to sell or lease the Equipment, the Lessee shall provide at its own cost and expense a work crew to disassemble the Equipment and, at Lessor's direction, deliver it to a dealer in salvage metal for sale as salvage. All gross amounts earned in respect of the Equipment after the date of expiration or earlier termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly paid to the Lessor. In the event any Item of Equipment is not assembled, delivered, detached and stored, as hereinabove provided, within sixty (60) days after the date of expiration or earlier termination, the Lessee shall pay to the Lessor for each day after the sixtieth (60th) day an amount equal to the amount, if any, by which .0355% of the Purchase Price of such Item for

each such day exceeds all gross amounts received by the Lessor with respect to such Item for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Item of Equipment to the Lessor, to demand and take possession of such Item of Equipment in the name and on behalf of the Lessee from whomsoever shall be in possession of such Item of Equipment at the time.

13. *Assignment; Possession and Use.* So long as no Event of Default shall have occurred under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Equipment or any Item (by sublease or otherwise except as otherwise expressly set forth hereinafter with regard to the usual interchange of traffic). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Loan Participants or resulting from claims against the Lessor or the Loan Participants not related to the ownership of the Equipment) upon or with respect to any Item of Equipment, including any accession thereto, or the interest of the Lessor, the Loan Participants or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent expressly permitted by the provisions of the immediately succeeding paragraph.

So long as no Event of Default shall have occurred under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use of the Equipment by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the

Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Finance Agreement; provided, however, that the Lessee shall not assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the United States. The Lessee may receive and retain compensation for such use from other railroads so using any of the Equipment, subject to Section 12 hereof. The Lessee represents and warrants to the Lessor that the Equipment will be used, and is intended for use, in connection with interstate commerce.

Nothing in this Section shall be deemed to restrict the right of the Lessee to assign or transfer its interest under this Lease in the Equipment or possession of the Equipment to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Finance Agreement) into or with which it shall have become merged or consolidated or which shall have acquired its property as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 9, 10, 11 and 12 and the rights to receive the rentals and other sums payable under this Lease) may inure to the benefit of the Lessor's assigns (including, but not limited to, the Loan Participants).

Pursuant to the Trust Agreement, the Lessor has granted to the Loan Participants as security for the performance of its obligations pursuant to the Trust Agreement, a security interest in all right, title and interest of the Lessor in and to the Equipment, this Lease and all rentals, issues and profits therefrom. The Lessee hereby acknowl-

edges receipt of notice of the grant of a security interest and agrees: (i) that the Loan Participants, in addition to the Lessor, shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Lessee under this Lease as though the Loan Participants were named herein as the lessor, except the obligations of the Lessee pursuant to Section 10(b) hereof; (ii) that the rental payments and other sums required to be paid by the Lessee hereunder shall not be subject to any right of setoff or counterclaim or other defense, and the payment thereof to the Lessor shall be final; (iii) that any rights acquired by the Lessee, by subrogation or otherwise, with respect to any of the Equipment by reason of any payment made by the Lessee pursuant hereto, may not be exercised until the Loan Participants have been paid all sums payable to them under the Finance Agreement; (iv) that the Loan Participants shall not, by virtue of the grant of a security interest, be or become subject to any liability or obligation under this Lease; and (v) that the Lease shall not be terminated or, without the prior written consent of the Loan Participants, amended, or modified, nor shall action be taken or omitted by the Lessee, if such amendment, modification, action or inaction would adversely affect the rights of the Loan Participants pursuant hereto.

14. *Renewal and Purchase Option.* Provided that this Lease has not been earlier terminated and that no Event of Default, or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing, the Lessee may by written notice delivered to the Lessor not less than six (6) months prior to the end of the Lease Term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not less than all of the Equipment then covered by this Lease, for up to, but no more than, two (2) consecutive additional three-year periods, the first three-year period commencing on the scheduled expiration of the Lease Term and the second three-year period, if one is elected, commencing upon the expiration of the first extended term of this Lease, as the case may be, at the then Fair Market Rental Value (as hereinafter defined) payable in monthly payments in advance in each year of such extended term. An election to extend the Lease pursuant to this Section shall be irrevocable.

Fair Market Rental Value shall be determined with respect to all of the Equipment on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after thirty (30) days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of the Equipment, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within twenty (20) business days after such notice is given, each party shall appoint an independent appraiser within twenty-five (25) business days after such notice is given, and the two (2) appraisers so appointed shall within thirty-five (35) business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within thirty-five (35) business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental Value of the Equipment subject to the proposed extended term within twenty (20) days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental Value of the single appraiser appointed shall be final. If three (3) appraisers shall be appointed, their determination shall be averaged, except that if one determination materially and substantially differs from the other two determinations, such determination shall be excluded when calculating the average, and such average shall be final and binding on the parties hereto as the Fair Market Rental Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of

the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental Value and shall be in lieu of any judicial or other procedure for the determination thereof, any each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

The Lessee, provided that no Event of Default or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing, will have the option to purchase all, but not less than all, of the Equipment upon the expiration of the Lease Term or any extension thereof, for an amount in each case equal to the then Fair Market Sales Value thereof. Fair Market Sales Value shall be determined on the basis of, and shall be equal in amount to, the sum which would obtain in an arm's-length transaction between an informed and willing purchaser (other than a purchaser currently in possession) and an informed and willing seller under no compulsion to sell, and, in such determination, costs of removal from the location of current use shall not be a deduction from such sum. Fair Market Sales Value shall be determined by agreement between the Lessor and the Lessee or, in the absence of such agreement, by independent appraisal utilizing as nearly as possible the procedure for appraisal for Fair Market Rental Value set forth in this Section. The Lessee must give the Lessor notice in writing of its desire to exercise such purchase option not less than one hundred eighty (180) days prior to the expiration of the Lease Term or any extension thereof. An election to purchase the Equipment pursuant to this Section shall be irrevocable.

The options to purchase and renew which are available to the Lessee pursuant to this Section may not at any time be exercised concurrently. In the event the Lessee shall deliver any such notice to the Lessor, the same shall be deemed without effect for all purposes of this Section. The exercise by the Lessee of any right of purchase shall constitute a waiver by the Lessee of all rights of renewal then or thereafter otherwise available hereunder. The exercise by the Lessee of any right of renewal shall constitute a waiver

by the Lessee of any right of purchase otherwise then available, but any right of purchase or renewal provided for herein during any succeeding renewal term shall not be deemed waived.

15. *Recording.* The Lessee, at its own expense, will cause this Lease, the Trust Agreement and the Assignment to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and will cause this Lease to be deposited with the appropriate public offices pursuant to Section 86 of the Railway Act of Canada. The Lessee will (at its own expense) cause the filing, registering, deposit and recording required of the Lessor under the Finance Agreement, including any filings under the Uniform Commercial Code, and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Loan Participants for the purpose of proper protection, to their satisfaction, of the Loan Participants' and the Lessor's respective interests in the Equipment, or for the purpose of carrying out the intention of this Lease, the Finance Agreement and the Assignment; and the Lessee will promptly furnish to the Loan Participants and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion of counsel for the Lessee with respect thereto satisfactory to the Loan Participants and the Lessor. This Lease, the Trust Agreement and the Assignment shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Item of Equipment, and this Lease shall be deposited with the appropriate public offices pursuant to Section 86 of the Railway Act of Canada and any Uniform Commercial Code filing shall be completed prior to such delivery and acceptance.

16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to twelve and one-half (12½) percent per annum of the overdue rentals and other obligations for the period of time during which they are overdue.

17. *Notices.* Any notice required or permitted to be given by any party hereto to another party shall be deemed to have been given when mailed, first class certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) if to the Lessor, at Broad and Walnut Streets, Philadelphia, Pennsylvania 19109, attention of Corporate Trust Department; with copies to the Trustor, at 1200 Philadelphia Pike, Claymont, Delaware 19073; Attention: President;

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104; Attention: Vice President and Treasurer; and

(c) if to the Loan Participants, to Provident National Bank at Broad and Chestnut Streets, P.O. Box 7648, Philadelphia, Pennsylvania 19101; Attention: Joseph H. Pratt, Banking Officer, and to The Union National Bank of Pittsburgh, Fourth Avenue and Wood Street, P.O. Box 837, Pittsburgh, Pennsylvania 15230; Attention: William M. Gormly, Assistant Vice President;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing.

18. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Trust Agreement, the Finance Agreement, the Purchase Order and the Assignment, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Equipment and, except for the Finance Agreement, supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

19. *No Recourse.* It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements of The Fidelity Bank, or for the purpose or with the intention of binding said Bank personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said Bank solely in the exercise of the powers expressly conferred upon the said Bank as Trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Bank or the Trustor or on account of any representation, undertaking or agreement of said Bank as Lessor, or the Trustor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

20. *Agreements for Benefit of Trustor.* All rights of the Lessor hereunder (including, but not limited to, its rights under Sections 6, 7, 9, 10, 11 and 12 and the right to receive the rentals and other sums payable under this Lease) shall inure to the benefit of the Trustor and the Trustor's assigns under the Trust Agreement.

21. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Loan Participants pursuant to the assignment hereof shall be deemed to be the original (and shall be so marked) and all other counterparts shall be deemed duplicates thereof (and shall be marked counterparts). Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

22. *Governing Law.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be

entitled to all rights conferred by Section 20c of the Interstate Commerce Act and by Section 86 of the Railway Act of Canada.

23. *Obligations of Lessor Under the Trust Agreement and/or the Finance Agreement; Additional Rentals.* In the event that the Lessor shall become obligated to make any payment or to perform any obligations pursuant to the Trust Agreement and/or the Finance Agreement not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations pursuant to the Trust Agreement and/or the Finance Agreement shall be fully performed, without regard for any limitation of liability of the Lessor contained in the Trust Agreement and/or the Finance Agreement plus an amount which, after subtracting all net federal, state or local taxes which are or will be required to be paid by the Trustor, as shall be required to maintain the Trustor's net after-tax cash flows and return on its investment. This Section is not to be construed as a guaranty of the loan from the Loan Participants to the Lessor, as Trustee of the grantor trust.

24. *Lessor's Right to Perform for the Lessee.* If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at a rate equal to the lesser of twelve and one-half (12 ½) percent per annum or the maximum rate permitted by applicable law, shall be payable by the Lessee upon demand.

25. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Trustor, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators.

stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease of Railroad Equipment to be executed under seal as of the date first above written.

ATTEST:

D. H. Brown
Asst. Sec.

THE FIDELITY BANK,

as trustee

Lessor

Account No. *905 1403*

By: *J. P. Brown*
V.P.

ATTEST:

J. P. Brown
Asst. Sec.

CONSOLIDATED RAIL

CORPORATION,

Lessee

By: *R. T. H.*
JP

The above Lease and all lease rentals and certain other payments derived therefrom are subject to a security interest in favor of certain loan participants under a Trust Agreement, dated as of July 18, 1978. This Lease has been executed in several counterparts of which this is Counterpart Number 16. To the extent that this Lease constitutes "chattel paper" or other collateral within the meaning of the Uniform Commercial Code in effect in any jurisdiction, only the counterpart stamped or marked "Counterpart Number 1" shall constitute such chattel paper or other collateral.

COMMONWEALTH OF PENNSYLVANIA } ss.:
 COUNTY OF PHILADELPHIA }

On this 1st ^{August} day of ~~July~~, 1978, before me personally appeared J. Mc Donald, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIDELITY BANK, that one of the seals affixed to the foregoing instrument is the seal of said bank, as Trustee and not in its individual capacity, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank in said capacity.

Joan Kolshoff
 Notary Public

My Commission Expires:

JOAN KOLSHOFF
 Notary Public, Philadelphia, Philadelphia Co.
 My Commission Expires February 11, 1980

COMMONWEALTH OF PENNSYLVANIA } ss.:
 COUNTY OF PHILADELPHIA }

On this 1st ^{August} day of ~~July~~, 1978, before me personally appeared R. T. Fox, to me personally known, who, being by me duly sworn, says that he is a J. P. of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Betty N. Salkin
 Notary Public

My Commission Expires:

BETTY N. SALKIN
 Notary Public, Phila. Co.
 My Commission Expires July 20, 1981

SCHEDULE A TO LEASE

TRI-LEVEL ENCLOSED AUTO RACKS

<i>Quantity</i>	<i>Lessee's Identifying Numbers</i>
227	CR 4501-4727

SCHEDULE B TO LEASE

CASUALTY VALUES

<i>No.</i>	<i>Percentage Loss Values</i>	<i>No.</i>	<i>Percentage Loss Values</i>	<i>No.</i>	<i>Percentage Loss Values</i>	<i>No.</i>	<i>Percentage Loss Values</i>
1	107.788854	31	98.813416	61	72.187451	91	43.492937
2	107.649701	32	98.383794	62	69.701093	92	42.732499
3	107.509059	33	97.941936	63	69.083679	93	41.976071
4	107.366916	34	97.496205	64	68.461171	94	41.211647
5	107.161813	35	97.038111	65	67.833721	95	40.451199
6	106.954710	36	94.338410	66	67.199764	96	39.682718
7	106.745589	37	91.634675	67	66.559984	97	38.906141
8	106.534433	38	89.282024	68	65.914334	98	38.133440
9	106.299204	39	88.799202	69	65.266954	99	37.352605
10	106.061736	40	88.312181	70	64.613642	100	36.563572
11	105.799990	41	87.812466	71	63.958536	101	35.778313
12	105.535796	42	87.308417	72	63.297432	102	34.983535
13	105.269136	43	86.799999	73	62.630284	103	34.179871
14	104.977967	44	86.287176	74	61.961227	104	33.367251
15	104.684120	45	85.766193	75	61.286060	105	32.561488
16	104.387572	46	85.240703	76	60.604731	106	31.746750
17	104.066281	47	84.706951	77	59.921379	107	30.938848
18	103.742075	48	84.168590	78	59.230481	108	30.121648
19	103.414929	49	83.625584	79	58.532705	109	29.295379
20	103.084820	50	83.074174	80	57.827997	110	28.475855
21	102.737070	51	82.518012	81	57.124437	111	27.647240
22	102.386195	52	81.957062	82	56.413895	112	26.809464
23	102.017518	53	81.387563	83	55.704451	113	25.978337
24	101.645550	54	80.813608	84	52.750370	114	25.143316
25	101.270263	55	80.234917	85	49.789201	115	24.301443
26	100.876981	56	79.651451	86	47.192635	116	23.452660
27	100.480213	57	79.063362	87	46.462923	117	22.599004
28	100.079931	58	78.470421	88	45.726015	118	21.738341
29	99.661454	59	77.872779	89	44.989989	119	20.872708
30	99.239293	60	75.032601	90	44.245413	120	20.000001